

**IN THE SUPREME COURT OF ZAMBIA**

**S.C.Z. Appeal No. 19/2008**

**AT NDOLA**

**(Criminal Jurisdiction)**

**BETWEEN:**

**BEST MABVUTO NG'UNI**

**Appellant**

**AND**

**THE PEOPLE**

**Respondent**

**Coram : Sakala, CJ., Chitengi and Mushabati JJS.**

**On 4<sup>th</sup> March and 8<sup>th</sup> March, 2008**

**For the Appellant : W.K. Cheelo, Legal Aid Counsel**

**For the Respondent : J.C. Kaumba, Deputy Chief State  
Advocate**

---

**J U D G M E N T**

---

Chitengi, JS., delivered the Judgment of the Court.

**Case referred to**

1. ***Solomon Chilimba V The People (1971) ZR 36***

The Appellant was convicted by the Subordinate Court of the offence of incest contrary to Section 159 (1) of the Penal Code Chapter 87 of the Laws of Zambia. The victim of this offence was the Appellant's own daughter. After conviction, the learned trial Magistrate committed the Appellant to the High Court for sentence

1234



and the High Court sentenced the Appellant to 25 years imprisonment with hard labour.

The Appellant appealed to this Court against both conviction and sentence. But when we heard the appeal the Appellant abandoned the appeal against conviction. This appeal is, therefore, against sentence only.

No ground of appeal had been specifically framed. But from the submissions of Mr. Cheelo, the ground of appeal appears to be that the learned trial Judge erred in law when he imposed a sentence of 25 years when the Appellant was a first offender.

Mr. Cheelo, learned Counsel for the Appellant, made a brief oral submission, the substance of which is that the Appellant being a first offender, the learned trial Judge should have given the Appellant the leniency that is due to a first offender. In the circumstances, Mr. Cheelo urged us to interfere with the sentence of 25 years imprisonment and pass a sentence below the sentence of 25 years imprisonment.

Mrs. Kaumba made no reply.

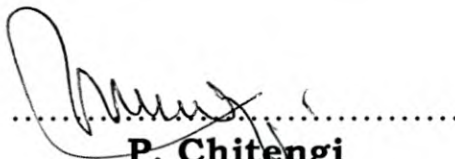
The offence the Appellant was convicted of carries a minimum mandatory sentence of 20 years imprisonment and maximum sentence of life imprisonment. The learned trial Judge imposed the sentence of 25 years imprisonment on the ground that the offence is serious and prevalent. Seriousness of the offence can not be an aggravating circumstance in this particular case.



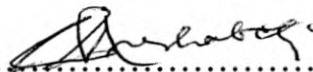
As the Court of Appeal (the forerunner of this Court) stated in **Solomon Chilimba V the People**<sup>(1)</sup> unless the case has some extra ordinary features which aggravate the seriousness of the offence, a first offender ought to receive the minimum sentence. In this case we do not see any extra ordinary features that take this case out of the ordinary incest case justifying imposing a sentence above the minimum mandatory sentence of 20 years imprisonment. In the event, we must interfere with the sentence. We quash the sentence of 25 years imprisonment imposed by the learned trial Judge and substitute it with one of 20 years imprisonment with hard labour with effect from 7<sup>th</sup> September 2001, date of arrest.



.....  
**E.L. Sakala**  
**CHIEF JUSTICE**



.....  
**P. Chitengi**  
**SUPREME COURT JUDGE**



.....  
**C.S. Mushabati**  
**SUPREME COURT JUDGE**

